



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0547	Title:	Revise laws on sentencing, registration, and treatment of sexual offenders
Primary Sponsor:	Perry, Gary L	Status:	As Amended in House Committee

- | | | |
|---|---|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
Expenditures:				
General Fund	\$537,758	\$1,405,597	\$2,312,667	\$3,182,631
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance	<u>(\$537,758)</u>	<u>(\$1,405,597)</u>	<u>(\$2,312,667)</u>	<u>(\$3,182,631)</u>

Description of Fiscal Impact:

Fiscal impact in FY 2008-2011 would result from the mandatory minimums contained in this bill for a sex offender, who offends against a child age 12 or under. This bill would significantly broaden the number of offenders sentenced to the mandatory minimum sentence including offenders who, under current law, would be sentenced to probation. Long term fiscal impact would result from an increase in prison sentence to a minimum of 25 years and a maximum of 100 years for the crimes included in this bill. The first 25 years of the sentence may not be suspended or deferred and the offender may not be eligible for parole. In addition, per Title 47, the Office of the State Public Defender provides attorney services to clients that qualify for them. This bill increases penalties, resulting in an increased workload for each case. Additionally, this bill would increase the need to provide attorneys services because the statute, if enacted, would increase the probability of defendants requesting trials due to the increased penalties provided in the bill.

FISCAL ANALYSIS

Assumptions:

Department of Corrections (DoC)

1. This bill imposes a prison sentence of 100 years for the crimes of sexual intercourse without consent, sexual abuse of children, incest, sexual assault, prostitution, promoting prostitution and aggravated

promotion of prostitution if the victim is 12 or under. At minimum the first 25 years of the sentence may not be deferred or suspended and the offender is not eligible for parole. The balance of 100 years that is not deferred or suspended will be spent on lifetime probation with GPS monitoring. Lifetime probation and GPS monitoring will not occur until at least FY 2033 when the first offenders sentenced under this bill complete the mandatory prison sentence.

2. SB 207, passed in the 2005 legislative session, already requires GPS monitoring for level 3 sex offenders. Currently GPS monitoring costs \$8.82 per offender per day. Using the current cost per day, the cost of GPS monitoring for 32 offenders in FY 2033 would be approximately \$1,349.
3. The current average prison sentence for offenders convicted of these sex crimes is six years. DoC estimates 32 offenders, who under current law would be sentenced to probation, will enter prison each year in the first six years for the above crimes. An increase in cost for these 32 offenders will occur in FY 2008. Using the Montana State Prison current average cost per day of \$75.88 the cost for 32 offenders in FY 2008 equals \$492,158 due to a staggered and compounding entrance into prison. An additional 32 offenders in FY 2009 would cost DoC \$1,359,997 compounding on an additional 32 offenders in FY 2010 to \$2,267,067 and in FY 2011 to \$3,137,031.
4. An additional increase in cost will occur six years after the bill's effective date of 7/1/07 based on the average length of stay for these sex crimes. DoC estimates an additional 38 offenders will be serving longer prison sentences for the above crimes under the provisions of this bill. The increase in cost for these offenders will occur in FY 2014. DoC estimates the cost by compounding the 32 offenders each year for the first six years and adding the 38 additional offenders in FY 2014 so the cost in the second year would be based on 64 offenders, 128 in the fourth year, 262 in the seventh year (FY 2017), etc. Long term impact for 262 offenders in FY 2014 would be \$6,347,893 compounding and increasing to a total cost of \$12,175,553 for 472 offenders by FY 2017.
5. The amended version of this bill deletes the provision (46-18-202) that requires all sex offenders to enroll in and successfully complete sex offender treatment Phase I [SOP] or sex offender treatment Phase II [SOP] while in prison. The sex offenders sentenced under the provisions of this bill and sex offenders who are court ordered must complete SOP Phase I and SOP Phase II.
6. The age range between offender and victim has been increased from three to four years for the crimes of sexual intercourse without consent and sexual assault. This modification may reduce the number of offenders incarcerated under this bill. Because DoC can not extract data specific to the age difference between the offender and victim at the time of the crime it is difficult to determine the reduction in offenders.
7. This bill also allows DoC to contract with a non-profit or for-profit entity to run a residential offender treatment program. The availability of a sex offender treatment facility is dependent on whether funding is approved by the legislature for the department to contract for the construction of up to a 130 bed facility. The amended version of this bill no longer allows an offender to be sentenced by a judge to the sex offender treatment facility. However, an offender sentenced to DoC may be placed, by DoC, in the sex offender treatment facility.
8. Under this bill an additional 11 offenders between the ages of 16 and 18 could be prosecuted as an adult instead of a juvenile for the crime of sexual assault. Because it is the courts' and prosecutors' discretion, there is no way to determine how many of those juvenile offenders would be transferred to adult court and subjected to the increased minimum sentence of 25 to 100 years provided for in this bill.

Office of the Public Defender (OPD)

9. OPD estimates approximately 50 cases annually might be affected by this bill. OPD assumed that existing FTE could absorb up to 25 percent of this caseload or 12 cases. The balance of approximately 38 cases would be handled by contract attorneys at an average of \$60 per hour. OPD estimates that 50 percent of contact cases would go to trial due to penalty if convicted. Therefore, the approximately 19 cases that would not go to trial would require about 10 hours of attorney time and those that do go to trial (about 19 cases) would require about 30 hours of trial time.

10. Cases that do not do to trial: 19 cases (assigned to contract attorneys) x 10 hrs x \$60/hr = \$ 11,400
 11. Cases that do go to trial: 19 cases (assigned to contract attorneys) x 30 hrs x \$60/hr = \$34,200
 12. Total estimated cost: \$45,600 (\$11,400 + \$34,200).

	<u>FY 2008</u> <u>Difference</u>	<u>FY 2009</u> <u>Difference</u>	<u>FY 2010</u> <u>Difference</u>	<u>FY 2011</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
Department of Corrections - (DoC)				
Office of the Public Defender (OPD)				
<u>Expenditures:</u>				
Operating Expenses - DoC	\$492,158	\$1,359,997	\$2,267,067	\$3,137,031
Operating Expenses - OPD	\$45,600	\$45,600	\$45,600	\$45,600
TOTAL Expenditures	\$537,758	\$1,405,597	\$2,312,667	\$3,182,631
<u>Funding of Expenditures:</u>				
General Fund (01)	\$537,758	\$1,405,597	\$2,312,667	\$3,182,631
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$537,758)	(\$1,405,597)	(\$2,312,667)	(\$3,182,631)

Long-Range Impacts:

An additional increase in cost will occur six years after the bill's effective date of 7/1/07 based on the average length of stay for these sex crimes. DoC estimates an additional 38 offenders will be serving longer prison sentences for the above crimes under the provisions of this bill. The increase in cost for these offenders will occur in FY 2014. DoC estimates the cost by compounding the 32 offenders each year for the first six years and adding the 38 additional offenders in FY 2014 so the cost in the second year would be based on 64 offenders, 128 in the fourth year, 262 in the seventh year (FY 2017), etc. Long term impact for 262 offenders in FY 2014 would be \$6,347,893 compounding and increasing to a total cost of \$12,175,553 for 472 offenders by FY 2017.

*Sponsor's Initials*_____
*Date*_____
*Budget Director's Initials*_____
Date